



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2003-2004

February 16, 2005

James E. Davis
Milwaukee Public Schools
5225 West Vliet Street
Milwaukee, WI 53201-2181

Re: Billed Entity Number: 132882
471 Application Number: 380783
Funding Request Number(s): 1047686
Your Correspondence Dated: January 29, 2004

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision regarding your appeal of SLD's Year 2003 Funding Commitment Decision for the application number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one application number, please note that for each application an appeal is submitted, a separate letter is sent.

Funding Request Number: 1047686
Decision on Appeal: **Denied**
Explanation:

- On appeal, you seek reversal of the SLD's decision to deny the funding request where no contract of legally binding agreement was in place when the Form 471 was filed. You state that a multi-year contract was in place at the time of the Form 471 filing. Further, you assert that on April 10, 1998, the Milwaukee Public Schools ("MPS") executed a contract with an initial term of five (5) years with five (5), one-year optional extensions. You assert that the Funding Year 2003, Form 471, Item 21 supporting documentation notes that MPS was exercising a three-year extension (i.e., three of the five one-year options). In support of your assertions, you refer to FCC decision DA 99-1773 regarding contract extensions.
- During the Item 25/Competitive Bidding Analysis review, Milwaukee Public School (MPS) was requested to provide a copy of all contracts or legally binding agreements related to each of the Forms 471. In a correspondence dated May 12, 2003, you advised that "The district has not awarded any contracts to any of the

recommended vendors." In a parallel correspondence of June 11, 2003 with the Program Integrity Assurance (PIA) reviewer you stated that the contract for the referenced FRN is a three (3) year extension of the existing contract. The existing contract stated that MPS could exercise five (5) one (1)-year contracts for SONET service; options in contracts can be exercised in the manner in which it is explicitly stated in the clause of the contract. The three (3) year contract you referenced would be considered a new a contract; additionally, the new contract includes not only the SONET services that were previously bid and supported under the original contract, but also POTS service. As such the services would also require a new FCC Form 470 and/or RFP. Since you clearly affirmed to SLD, on appeal, that the cited FCC Form 470 is the establishing FCC Form 470 for these services and the FCC Form 470 which led to the execution of the existing contract, one can conclude that a new FCC Form 470 was not issued to support the new three (3) year contract. You also confirmed to SLD that the original five (5) year term contract expired on May 30, 2003; since the contract has expired and you chose not to exercise one (1) of the 5 year renewal options in the original contract, no contract was in place at the time you filed your FCC Form 471.

- Program rules require that an applicant have a legally binding agreement for all services requested on Form 471, except for non-contracted Tariff Services, Month-to-Month Services, or services ordered via State Master Contracts, at the time of filing of the Form. This Form 471 had an Application Received Date ("ARD") of February 6, 2003, and the contract extension was not executed as of this date. Consequently, the contract extension cannot be accepted as a valid contract for this Form 471. Therefore, based on the CED of the initial contract, funding is only eligible for the month of July 2003.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either the SLD or the Federal Communications Commission (FCC). For appeals that have been denied in full, partially approved, dismissed, or cancelled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience, and cooperation during the appeal process.

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